

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

- - - - -  
UNITED STATES OF AMERICA, )  
v. ) CRIMINAL ACTION NO.  
ADONIS MARQUIS PERRY, ) 2:18cr113  
Defendant. )  
- - - - -

TRANSCRIPT OF PROCEEDINGS  
Norfolk, Virginia  
March 11, 2020

BEFORE: THE HONORABLE REBECCA BEACH SMITH  
United States District Judge

APPEARANCES:  
UNITED STATES ATTORNEY'S OFFICE  
By: William B. Jackson  
Joseph DePadilla  
Assistant United States Attorney  
Counsel for the United States  
  
RIDDICK BABINEAU PC  
By: Jon M. Babineau  
Counsel for the Defendant

1 (Hearing commenced at 3:05 p.m.)

2 THE CLERK: In case 2:18cr113, United States of  
3 America versus Adonis Marquis Perry.

4 Mr. Jackson, Mr. DePadilla, is the government ready  
5 to proceed?

6 MR. DePADILLA: The government is ready.

7 THE COURT: Good afternoon.

8 MR. DePADILLA: Good afternoon.

9 THE COURT: Mr. Babineau, is the defendant ready to  
10 proceed?

11 MR. BABINEAU: I am ready to proceed.

12 THE COURT: Good afternoon, Mr. Babineau.

13 Let the record reflect that the defendant, Adonis  
14 Marquis Perry, is here in person for the hearing. There are  
15 a number of matters that have come before the Court this  
16 afternoon, and I'll take them in the order that they have  
17 been filed.

18 The first was the defendant's motion filed by  
19 counsel, Mr. Babineau, to inquire, and a motion on behalf of  
20 the defendant to appear at the jury trial in jail clothes  
21 and restraints. That was filed on February 12th, 2020.

22 Then there was defense counsel's motion to withdraw  
23 filed on March 5, 2020, and the defense counsel did file a  
24 motion to seal the motion to withdraw. The Court left the  
25 motion to seal and the notice under Rule 49 notice on the

1 public docket, and there was no response and no objections,  
2 and the order was entered earlier today.

3           So we are here before the Court on these motions,  
4 and the first motion that the Court will take up, I'll do  
5 the motion to inquire together with the motion to withdraw.  
6 The first motion would be the motion that you filed,  
7 Mr. Babineau, on the defendant's behalf for him to appear at  
8 jury trial in jail clothes and restraints. It requests that  
9 he wants the, "...jury to be aware of his custodial status."  
10 That's ECF number 137, which is the motion, and that's at  
11 Page 1.

12           The government has taken no position on the motion  
13 but requests that the defendant himself put his request on  
14 record at the hearing, and that the Court, while the  
15 defendant is under oath, putting his request on the record,  
16 remind him that this will not be a grounds for reason of  
17 reversal in later proceedings, and that is pursuant to  
18 *Duarte v. United States*, 81 F.3d 75 at 77. That's a Seventh  
19 Circuit 1996 case. In other words, the defendant can't make  
20 a request and then make his request, which he has verified  
21 and pursued under oath, a point of reversal in later  
22 proceedings. That would be stressed to the defendant.

23           The way we will proceed on this motion is, the  
24 first thing that I'll do, after making it more of a  
25 statement, is to allow Mr. Babineau to present why he filed

1 the motion and the discussions in this regard. It's a  
2 public motion to the Court, and then the Court will, if  
3 appropriate, place Mr. Perry under oath and verify that he  
4 does wish to appear at trial in his jail clothes. The  
5 restraints are another matter, but I will take that up with  
6 him.

7 MR. BABINEAU: Yes, ma'am. In filing that motion,  
8 I met with Mr. Perry a number of occasions in the Western  
9 Tidewater Regional Jail to review his case, the discovery in  
10 his case, and prepare him for trial, which is scheduled the  
11 end of this month.

12 THE COURT: Yes, it is, Tuesday, the 31st.

13 MR. BABINEAU: So in discussing the trial with him  
14 and kind of the indices of trial, I advised him that I was  
15 trying to find out what size shirt and pants, shoes, jacket  
16 he wore so that I could make sure that I provided him with  
17 clothing. I have clothing from lots of other clients who I  
18 have represented and I've purchased in the past that I have  
19 available, or I could reach out to his family, was the other  
20 option I said to him, that I would either buy him the  
21 clothes in order to have him properly dressed before the  
22 Court, before the jury, or I could reach out to his family.

23 He became very angry with me relative to that topic  
24 and was adamant about the fact that he wanted to appear in  
25 jail clothes and shackled because he wanted the jury to know

1 what the government has done to him, and that he is not a  
2 free man. He doesn't want to give people the, his quote,  
3 allusion that he is free when he is not free. I explained  
4 to him, obviously, what I felt my opinion was on that and  
5 that I didn't think that was a great idea, but even  
6 notwithstanding that, and this happened on at least two  
7 conversations that we had, he was adamant about me filing  
8 the motion, so I did.

9 THE COURT: Thank you.

10 Mr. DePadilla, is there anything you want to add  
11 before the Court addresses Mr. Perry on the motions?

12 MR. DePADILLA: No, Your Honor. Thank you.

13 THE COURT: We need to place Mr. Perry under oath.

14 (Defendant was sworn.)

15 THE COURT: Mr. Perry, the Court needs to make a  
16 direct inquiry of you to be sure that the motion and the  
17 representations that have been made to the Court you agree  
18 with them. You've heard what Mr. Babineau has said, that  
19 you wish to appear at your trial in your jail clothing as  
20 well as in the restraints. Is that correct?

21 THE DEFENDANT: No. I never even seen any of those  
22 documents. I don't have any documents to work with. I  
23 didn't even know what I was coming to court for today. I  
24 don't have no documents. I haven't seen none of these  
25 documents.

1           THE COURT: Well, let's approach it this way. It's  
2 been represented to the Court that you want to appear at  
3 your trial in your jail clothing and in your restraints. Is  
4 that correct?

5           THE DEFENDANT: I never said anything about being  
6 in restraints.

7           THE COURT: Well, then, let's look at the jail  
8 clothing. Do you wish to appear in your jail clothing?

9           THE DEFENDANT: Why wouldn't I? I am.

10          THE COURT: You can appear in your jail clothing,  
11 the law allows that, but you also can appear in civilian  
12 clothing. Which do you wish to appear in before the Court?

13          THE DEFENDANT: What would be the difference?

14          THE COURT: It's before the jury.

15          THE DEFENDANT: Is it going to make any difference?

16          THE COURT: Sir?

17          THE DEFENDANT: What is going to make any  
18 difference?

19          THE COURT: I don't answer the questions. It's up  
20 to you. In other words, you have discussed this with your  
21 attorney whether you want to appear in jail clothing or in  
22 clothing that would be provided for you through your family  
23 or through an attorney or through the Court. It's your  
24 decision whether you wish to appear in jail clothing or in  
25 civilian clothing. If you don't make a decision, then you

1 will appear in civilian clothing unless you opt to appear in  
2 your jail clothing.

3 THE DEFENDANT: What do you mean?

4 THE COURT: Just what I said. I say what I mean,  
5 and I mean what I say.

6 THE DEFENDANT: Well, like I said, I don't  
7 really -- he filed the motion. I didn't even know anything  
8 about that. I don't even have a copy of it.

9 THE COURT: Well, even assuming that you don't have  
10 a copy of it, I'm telling you that you have a jury trial  
11 coming up March 31. There will be a jury seated in this  
12 jury box, and you can appear before them in jail clothing,  
13 if that's what you determine to do, it is permissible under  
14 Supreme Court law, or you can appear in street civilian  
15 clothing either provided through the Court or your attorney  
16 or your family.

17 THE DEFENDANT: If I'm in handcuffs and shackles,  
18 how am I going to go over the documents with my case?

19 THE COURT: You're not going to be in handcuffs  
20 because if you don't request that, the Court isn't even  
21 going to consider it. In any event, I would tell you that  
22 restraints is not viewed necessarily as a waivable right by  
23 you. In other words, you're not going to appear in  
24 handcuffs. I'm not going to allow that you appear in  
25 handcuffs before the jury or in open shackles. I'll give

1 you the Supreme Court law on that. That's not the question  
2 I'm asking you.

3 THE DEFENDANT: Well, I really don't know what is  
4 right.

5 THE COURT: You have to speak up.

6 THE DEFENDANT: This right here in this jumpsuit.

7 THE COURT: What?

8 THE DEFENDANT: I want to wear the jumper right  
9 here. I want to wear the jail issued clothes.

10 THE COURT: So you want to wear, for your trial,  
11 jail-issued clothes?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You understand that you will be  
14 provided, if you wanted to, street clothes, civilian  
15 clothes? Do you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that your attorney,  
18 Mr. Babineau, advises against you appearing in jail  
19 clothing? He just said that at the podium.

20 THE DEFENDANT: Yes.

21 THE COURT: It is your election to appear in the  
22 current jumpsuit, or one like it, in your jail jumpsuit at  
23 your trial?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Let me ask you this. Now, you know



1 that you will not be permitted to use your decision to  
2 appear in your jail jumpsuit as a cause for reversal in any  
3 later proceedings?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you have any questions about your  
6 decision to appear in your jail jumpsuit?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Thank you.

9 Is there any further inquiry, Mr. Babineau, you  
10 want the Court to make of the defendant in this regard, his  
11 jail jumpsuit?

12 MR. BABINEAU: No, ma'am.

13 THE COURT: Mr. DePadilla, is there any further  
14 inquiry you want the Court to make of the defendant about  
15 his election to appear in his jail jumpsuit?

16 MR. DePADILLA: No, Your Honor. Thank you.

17 THE COURT: I will approve and grant the motion  
18 that has been filed on the defendant's behalf and his  
19 election here in court that he be able to appear in his jail  
20 clothes, i.e., his jail jumpsuit.

21 The Supreme Court has recognized that appearing in  
22 jail clothes is, "Not an uncommon defense tactic," and that  
23 while the Court has indicated that he "can't be compelled to  
24 stand trial in a jail garb," it has been said that there is  
25 no constitutional violation if the defendant, who has

1 received the proper advice of counsel and/or the Court fails  
2 to object about being tried in his jail clothes, and here  
3 it's not an objection to being tried in the jail clothes,  
4 it's an absolute request under oath from the defendant.

5 The Supreme Court case that is on point is *Estelle*  
6 *v. Williams*, 425 U.S. 501. It's discussed around Page 508  
7 through 512. It is well-established Supreme Court  
8 precedent. It was issued in 1976. So, consequently, this  
9 is not only someone who was brought into court for a jury  
10 trial in jail clothing, this is someone who actually request  
11 that they be tried in jail clothing.

12 I find that there is no constitutional violation,  
13 that the defendant has been informed that he does not have  
14 to appear in the jail clothing, that he has an option to  
15 appear in civilian street clothing, and that it will be  
16 provided for him. Under oath he has elected to proceed to  
17 trial in his jail clothes, i.e., his jumpsuit.

18 In contrast, I will further rule, so that it's  
19 clear, in regard to his restraints, in contrast to the  
20 clothing issue, appearing without restraints is not viewed  
21 as a right that is waivable by the defendant. Instead,  
22 actually shackling, this is in front of the jury, is, at a  
23 threshold level, "Inherently prejudicial" and as such is  
24 only permitted "where justified by an essential state  
25 interest." That's the Supreme Court case of *Holbrook v.*

1     *Flynn*, 475 U.S. 560, that is discussed at 568 to '69. It is  
2     a 1986 case.

3             Obviously, in a case such as this, at least for the  
4     handcuffs, if there does come a point where Mr. Perry is  
5     either proceeding *pro se* or with standby counsel, it will be  
6     difficult for him to proceed with access to the podium,  
7     documents, and so forth, and the Court recognizes this.

8             Accordingly, the Court does not permit at this  
9     juncture him to appear in restraints or shackling, visible  
10    restraints to the jury. The only way that that could be  
11    overruled is there appears to be "...an essential state  
12    interest" that is set out in *Brewster v. Bordenkircher*, 745  
13    F.2d at 913. It's discussed at Page 916. It's a 1984  
14    Fourth Circuit case.

15            However, there are also matters in the law that  
16    says that a defendant who has a history of any type of  
17    violent outbursts and threats, both in and out of court,  
18    that the Court should seek the marshal's advice. The case  
19    law says that the Court is entitled to "rely heavily on it."  
20    That, again, is in *Brewster v. Bordenkircher*, the Fourth  
21    Circuit case, and, obviously, given the history before this  
22    Court of this defendant, the Court will be making inquiry  
23    with the marshals about the proper security measures that  
24    are required, and if those measures then aren't adequate,  
25    then it will depend upon the measures recommended by the

1 marshal service, and the Court will go forward in that  
2 regard, whether some type of restraints are suggested.

3           There are restraints that can be put on a defendant  
4 that are not visible to a jury, such as the bandit device  
5 and other ways that the defendant, if they have the history  
6 that this defendant has, can be properly restrained for  
7 security purposes of the court, and when I say the court, I  
8 mean the attorneys, the court personnel, the marshals, and  
9 the integrity of the trial.

10           The Court always has to be concerned about the  
11 integrity of the trial, and that becomes an essential state  
12 interest, the integrity of the trial. So while at this  
13 juncture I am ruling that he will not be in any type of  
14 visible handcuffs or shackles before the jury, that the  
15 Court will discuss and inquire with the marshals and "rely  
16 heavily" on the marshal's advice and how to proceed in front  
17 of the jury.

18           So that is the Court's ruling in terms of him  
19 wearing what he is wearing today, the visible handcuffs and  
20 shackles, which the marshals recommended for today's  
21 proceeding, and that is the way we have proceeded today, but  
22 it is not before the jury.

23           So that takes care of the appearance, allowing him  
24 to appear in his jumpsuit before trial, not having handcuffs  
25 and leg irons or shackles on him, and, again, the Court will

1 proceed to make appropriate measures that will secure the  
2 integrity of the trial process itself as well as the safety  
3 of any other individual in the courtroom.

4 That brings us to the motion to inquire and the  
5 motion to withdraw.

6 Mr. Babineau.

7 MR. BABINEAU: Yes, Your Honor. The motion to  
8 inquire was, obviously, filed prior to the motion to  
9 withdraw. The motion to inquire was also based upon  
10 discussions between myself and Mr. Perry as to how to  
11 proceed with the trial.

12 As the Court knows, he has had three lawyers prior  
13 to me. I think it was Mr. Grindrod, Mr. Woodward,  
14 Mr. Hobbs, and then myself. Mr. Perry expressed displeasure  
15 with the way in which I propose to handle the trial of the  
16 matter, advising me that the same was with his prior  
17 counsel, and the advice that they were giving him, he did  
18 not agree with their advice, and that he wanted to, quote,  
19 fire me.

20 I advised him that there may be another option, or  
21 that the Court would consider that would be his right and  
22 that would be for him to represent himself at trial with  
23 standby counsel. At the time I put in the motion that would  
24 have been appropriate for me to at that time to remain as  
25 standby counsel because I didn't believe our relationship

1 had deteriorated to the point it had in the filing of the  
2 final motion in regard to my motion to withdraw.

3 But he did advise me that if nobody was going to  
4 help him, like nobody had, quote, that he wanted to  
5 represent himself. I advised him, again, about standby  
6 counsel, and he seemed to be accepting of that. So, hence,  
7 I filed that motion at the same time I filed the other  
8 motion relative to the jumpsuit, which the Court has  
9 addressed.

10 Want me to address the motion to withdraw, Judge?

11 THE COURT: Yes. Go ahead.

12 MR. BABINEAU: Yes, ma'am. So after going to the  
13 jail on a number of occasions, Western Tidewater Regional  
14 Jail, probably somewhere in the neighborhood of about eight  
15 times or so in reviewing the case with Mr. Perry, including  
16 the discovery and the information that I received from  
17 potential witnesses in the case who he had asked me to  
18 subpoena a couple of whom, or three of whom I had  
19 interviewed, on March 3rd, when I appeared at the jail as  
20 contained in the motion that's been filed, discussing with  
21 him the case, he erupted into a violent outburst, yelling  
22 extremely loudly, like you could probably hear him outside  
23 this courtroom today if you were out on the sidewalk, and  
24 exhibiting extremely violent behavior, striking the wall and  
25 then the glass repeatedly with the receiver of the

1 telephone.

2           The corrections officers, during the visit, who  
3 came by and told him on at least two occasions to lower his  
4 voice and calm down, there were other folks back in the  
5 panel areas, and he did not. He just became more violent  
6 and louder and pacing around within the room until the  
7 outburst, in which he advised me that I was not going to be  
8 his lawyer, that I would not be around to be his lawyer,  
9 that he would make sure that I was taken out.

10           THE DEFENDANT: He lying, Judge.

11           MR. BABINEAU: Then two correctional officers, a  
12 captain and another corrections officer came into the room,  
13 not at my calling but because of the outburst and him  
14 hitting the receiver against the glass -- I was on the other  
15 side of the glass -- they forcibly removed him.

16           Subsequent to that, about three or four hours later  
17 I received a phone call from the United States, Assistant  
18 United States Attorney William Jackson, advising that agents  
19 had listened to a phone conversation from the jail to one of  
20 Mr. Perry's family members in which he advised the caller  
21 that he was going to "F" me up.

22           As a result of that, I contacted the Virginia State  
23 Bar, made inquiry from them as related to ethical matters  
24 that would be of concern as a result of that conversation.  
25 In my belief, I had an affirmative duty to report what I

1 believe to be, given his history, his characteristics, his  
2 violent gang affiliation, that I needed to notify law  
3 enforcement, which I did, and I notified the United States  
4 Marshal Service, and I also notified the homicide violent  
5 crimes lieutenant, Lieutenant Shaun Squyres, Norfolk Police  
6 Department, who was in touch with the gang squad and others,  
7 and as a result of his statements, I perceived them as a  
8 real threat to my safety and security, and as such I'm not  
9 in a position, because of the adverse situation that I'm in  
10 with Mr. Perry at this point in time, I am not able to  
11 represent him.

12 I, quite frankly, Judge, I don't wish upon anyone  
13 to sit next to him. I think he's violent, and somebody is  
14 going to get hurt, and that would be on my mind the whole  
15 time. I would not be in position to help him in his case.

16 THE COURT: That would be even as standby counsel  
17 at this juncture?

18 MR. BABINEAU: Even as standby counsel at this  
19 point, Judge. I've done a lot of soul-searching on it  
20 because I want everyone to have a good defense. I've been  
21 doing this for 32 years, as the Court knows, a long time  
22 before Your Honor, this is the first time I've been put in  
23 this situation in state court or Federal Court.

24 THE COURT: Mr. DePadilla, is there anything you  
25 want to say before I inquire of Mr. Perry?



1 MR. DePADILLA: No, Your Honor, not at this time.

2 THE COURT: I think if you can get the microphone  
3 to Mr. Perry, he can stand there at the table.

4 THE DEFENDANT: Well, Your Honor, as he say, he  
5 came to the jail a few times and visit with me. I'm not  
6 disputing the facts of what he said about pertaining to the  
7 visits with me about my case and certain documents involving  
8 my case and the case strategy or whatnot.

9 Some of the documents that I asked that I know for  
10 sure have been filed with the clerk of court to this court,  
11 I don't have them in the motion discovery. He doesn't even  
12 have the full motion discovery. He doesn't even have the  
13 videotape. He got a blank DVD of the crime scene, the  
14 officer's body cams. It is a blank DVD. I haven't even  
15 been able to go over all the facts of the case with  
16 Mr. Babineau at all. Certain documents that I asked him  
17 for, he hasn't been able to produce.

18 Like I said, I'm not disputing the fact of my  
19 conversation with Mr. Babineau -- how can I put this? It  
20 might not have had went that way, but I never, in no form,  
21 ever threatened Mr. Babineau to his face, told him that I  
22 was going to do anything to him or sent somebody to get him  
23 or something, you know what I'm saying.

24 I might have been mad when I talked on the phone  
25 and said, you know what I'm saying, I would do something to

1 him, but I never told him that I would, you know what I'm  
2 saying, get somebody to do something to him or nothing at no  
3 time. That is a lie.

4 Like I said, he wanted me to agree to certain  
5 stipulations that I wasn't -- I didn't see fit to agreeing  
6 to at my upcoming trial, and I opposed to it, and I told  
7 him, and that's where we didn't see eye to eye on. But,  
8 like I said, he didn't even produce the full motion  
9 discovery yet, so I don't -- you know what I'm saying, there  
10 is a lot of things missing out of there that I don't have,  
11 you know what I'm saying.

12 When I left the office with him that day, when I  
13 left that visit with him that day, I tried to contact my old  
14 lawyer that I knew filed these documents, which was Andrew  
15 Grindrod, but he told me he couldn't help me, but he filed  
16 them via the computer electronically, so they are part of my  
17 motion discovery. But, as I said, I have yet to receive  
18 these documents.

19 THE COURT: Well, there are a number of things,  
20 Mr. Perry, that you need to be aware of. Number one, at  
21 this juncture, and when you were with Mr. Babineau, you are  
22 not the lawyer, and you do not run the case. The lawyer is  
23 there to make decisions and to file motions and to proceed  
24 with the defense. So it's not you running the case; it's  
25 the lawyer running the case.

1           You have a lengthy history now with the Court.  
2 This is the fourth attorney. Your statements here defy  
3 credibility that you haven't seen the documents in your  
4 case, because you've had four lawyers. Mr. Grindrod was the  
5 first lawyer. He passed the file on to Mr. Woodward who  
6 passed the file on to Mr. Hobbs who's passed the file on to  
7 Mr. Babineau.

8           THE DEFENDANT: I understand all that.

9           THE COURT: Each of those attorneys have gone  
10 through things with you and then reached a point where you  
11 have your outburst and made it such that they could not  
12 communicate with you.

13           THE DEFENDANT: No, ma'am.

14           THE COURT: Mr. Perry, Mr. Perry, you may not  
15 overtalk the Court.

16           THE DEFENDANT: Yes, ma'am.

17           THE COURT: I'll give you a chance to talk, but you  
18 may not overtalk the Court. I am telling you that there is  
19 a record here. There is a history here. There have already  
20 been four attorneys. Each of those attorneys have come very  
21 close up to trial. You have been afforded legal  
22 representation, and, as I said, you are not the lawyer.  
23 There have been no stipulations filed against your wishes  
24 here with the Court. So whatever wishes you have expressed  
25 to your attorneys, there have been nothing filed here.

1           THE DEFENDANT: That's because he ain't filing. He  
2 ain't filing nothing I asked him to file.

3           THE COURT: There are no stipulations. I said do  
4 not talk over me, please. There are no stipulations filed,  
5 and what you're saying, just again, tells the Court that  
6 you're not going to listen to your lawyers.

7           THE DEFENDANT: You didn't even ask him if anything  
8 that I said was true or factual. You didn't even ask him.  
9 I'm telling you, he has a chance to speak up right now about  
10 everything I just said.

11          THE COURT: I'm going to let him respond,  
12 Mr. Perry, but you were responding. I asked you to respond,  
13 and I'm telling you your history with the Court defies what  
14 you are saying, and you've had four attorneys. You've been  
15 through motions to suppress. I know you have seen the tape.  
16 I know that the tape is there.

17          THE DEFENDANT: Yeah, but all my notes, when they  
18 sent me to Butner, they shredded all my documents. They  
19 shredded all my documents. And I know from ever since  
20 Andrew Grindrod has not been my attorneys, all the  
21 documents, on the motion to discovery, is some documents  
22 that's missing, and I been asking him about them. I know  
23 they, in fact, they exist. I want those documents. I'm  
24 obligated to have them, right?

25          THE COURT: What I'm telling you is that the Court

1 cannot overlook the fact of the history of this case, the  
2 fact that the Court knows that you have seen the tape, the  
3 Court knows that you have reviewed the tape with at least  
4 two of your attorneys.

5 THE DEFENDANT: One.

6 THE COURT: Okay. So who did you review it with?

7 THE DEFENDANT: Andrew Grindrod. That was the only  
8 lawyer I ever reviewed it with. After Andrew Grindrod was  
9 taken off my case, when Woodward retained -- when Woodward  
10 became my attorney, I was sent to Butner. They took all of  
11 my documents. They took my whole case file, and they  
12 shredded it. That is what I'm telling you. Certain  
13 documents that I know that should be in my motion to  
14 discovery isn't there, and I have been asking for them the  
15 whole time that Nicholas Hobbs was my attorney, that  
16 Lawrence Woodward was my attorney, and John Babineau, the  
17 whole time.

18 THE COURT: I will let the record speak for itself.  
19 There were motions to suppress that were continued under  
20 Mr. Woodward. It is a matter of fact and record in this  
21 court that the tape has been discovered. The tape has been  
22 reviewed in court and with the defendant. The motion to  
23 suppress has been heard, and I know there were two motions  
24 to suppress. They were heard. They were heard by Judge  
25 Miller, and then they became before this Judge on review,

1 and they have been upheld. We are not going to revisit  
2 motions to suppress. We are not going to revisit evidence  
3 that the Court knows the defendant has reviewed.

4 THE DEFENDANT: Judge.

5 THE COURT: If you keep talking over me, I'm going  
6 to have to take appropriate measures, Mr. Perry, because the  
7 Court has to rule.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: You are not entitled to talk over the  
10 Court.

11 THE DEFENDANT: Yes, ma'am. But --

12 THE COURT: You are not entitled to talk over the  
13 Court. As the Court was saying, his allegations defy the  
14 record in this case, and I would advise you, Mr. Perry, we  
15 will get to your representation in a moment, but the Court  
16 will not tolerate a manipulation of the court system or the  
17 integrity of a jury trial and continued antics and conduct  
18 that are becoming historical in nature now over the long  
19 time period that this case has been pending now. I believe  
20 it was originally filed in July of 2018.

21 We are on the second superseding indictment. We  
22 are on the fourth attorney, and each attorney is moving to  
23 withdraw because of, at this point, his inability to  
24 maintain any type of decorum and relationship with the  
25 defendant, including Mr. Grindrod who moved to withdraw as

1 counsel from this case.

2 So I'm just stating that as a matter of record, and  
3 I have heard you, Mr. Perry, and you may be seated.

4 Mr. Babineau.

5 THE DEFENDANT: The record will speak for itself,  
6 though.

7 THE COURT: Any response you want to make to the  
8 defendant?

9 MR. BABINEAU: Just that I have a quite voluminous  
10 amount of discovery that I received passed down from lawyer  
11 to lawyer to lawyer, including a box that I received that I  
12 received from Mr. Hobbs which had notes going back to  
13 Mr. Grindrod and Mr. Woodward.

14 So I have, I believe, a complete file. I just  
15 fully discussed the suppression hearings, the rulings and  
16 the suppression hearing, the evidence that was going to be  
17 admitted, as well as fully discussed the video and the need  
18 to have Officer Para, Investigator Para subpoenaed for trial  
19 in the case. It was, as the Court may or may not know, as  
20 Investigator Miller and Investigator Para were the two  
21 Norfolk police detectives who had the traffic stop.

22 THE COURT: I'm well aware. I reviewed the video.

23 MR. BABINEAU: I'm sorry, Judge. I keep thinking  
24 Judge Miller. Judge Miller conducted the hearing, but you  
25 reviewed it. I apologize. That Para, Investigator Para was

1 found maybe to be less than truthful in the testimony that  
2 he offered to the Court, but there was evidence and  
3 testimony from Para, as well as electronic evidence that was  
4 being admitted through the cell phone, and so I discussed  
5 all of that at great length, the case law associated with  
6 that, the reason for the superseding indictment relative to  
7 the firearm by felon with the Supreme Court ruling that  
8 required an additional element that the person knew at the  
9 time that he was a prohibited person by virtue of his felony  
10 convictions.

11 So we discussed that going into the jail on March  
12 3rd. Prior to going into the jail, I spent -- Mr. Jackson  
13 will correct me if I'm wrong -- but probably 20 minutes on  
14 the telephone with him discussing a number of matters,  
15 including a stipulation related to the fact that he was a  
16 convicted felon so the jury would not hear the extent of his  
17 felony record or see any felony sentencing order that may  
18 otherwise be introduced into the trial of the case.

19 So the government was willing to enter a  
20 stipulation that would just say he was a convicted felon  
21 without more, which I told him was great for us because,  
22 clearly, they could prove he was a convicted felon, but we  
23 certainly didn't want the jury to know about the nature and  
24 the extent or the number of felonies because I think the  
25 government might be able to introduce more than just the one



1 felony into the record in the case.

2           So we did talk about that, as he mentioned. So  
3 responding to that, I also asked United States Attorney  
4 Jackson about providing some audit information or some other  
5 body cam detail relative to officers that may have been at  
6 the traffic stop, including Para and Miller, if there was  
7 any detail related to times when the cameras were turned off  
8 or otherwise, which is an issue that he has, he meaning  
9 Mr. Perry, has raised with me. He actually raised it in a  
10 letter that was, I think, offered February 26 that I  
11 received in my office on March the 2nd, prior to my meeting  
12 with him on March the 3rd, and I had a conversation with  
13 Mr. Jackson about that type of information on March the 3rd,  
14 and I communicated that to Mr. Perry that I would be --  
15 Mr. Jackson would be making the appropriate inquiries and  
16 looking through what he had and would provide that  
17 information, if it existed, as quickly as he could get his  
18 hands on it.

19           In addition to that, I wanted to talk to him about  
20 jury instructions because he had some, he, meaning  
21 Mr. Perry, had some specific questions about jury  
22 instructions, and so I asked Mr. Jackson in that same phone  
23 conversation if he would forward jury instructions to me  
24 because he had already prepared them since this case has  
25 been prepared for trial for a long time and that the

1 government had already done jury instructions.

2 I asked him if they were standard book  
3 instructions, if you will, and he said no, there were some  
4 that had some nuances to them, and I wanted to be able to  
5 see those and go over them with Mr. Perry because Mr. Perry  
6 was concerned about jury instructions.

7 So he and I had some very fruitful, many very  
8 fruitful discussions. I don't go to the jail just to hang  
9 out and chat with my clients. I go there, it's work, it's  
10 business. I want to know as much about their case, and I  
11 want to give them every bit of information they can. Every  
12 time he came to me, he never claimed he lost any notes or  
13 anything of that nature.

14 In any regard, he came truly with two hands with  
15 piles of paper. He has transcripts of the proceedings. He  
16 has copies of the discovery. He has -- would fill up a  
17 banker's box of papers each time he came back and forth, and  
18 sometimes I would tell him, "Tell him don't bring the  
19 papers. He and I are going to talk about some things that  
20 we don't need the papers. We are going to talk about some  
21 case law and some other things." So I would suggest that  
22 his suggestion to the Court is inaccurate.

23 THE DEFENDANT: Lying again.

24 THE COURT: Mr. DePadilla, is there anything you  
25 want to add to that? I'm also going to ask Mr. Jackson to

1 verify what has been said, but is there anything you want to  
2 add in response to either Mr. Babineau or Mr. Perry?

3 MR. DePADILLA: Only, Your Honor, that over the  
4 pendency of this investigation and prosecution, we have  
5 worked with each one of Mr. Perry's attorneys. When  
6 Mr. Grindrod made requests, we got him information. When  
7 Mr. Woodward made requests, we got him information. When  
8 Mr. Hobbs became lawyer, we dealt with his requests. At  
9 every juncture the government has tried to give Mr. Perry  
10 what he's wanted in this case.

11 As Your Honor fully pointed out, he's viewed the  
12 tapes at the suppression hearing. We played them *ad nauseam*  
13 literally from the beginning of the traffic stop until the  
14 last possible moment.

15 THE DEFENDANT: It won't tapes from my attorney.  
16 It was tapes from the prosecutor and from U.S. Government.

17 MR. DePADILLA: As far as his latest request for  
18 new body cam footage, we are now two years plus from the  
19 time of the traffic stop.

20 THE DEFENDANT: I don't want the body cam footage.  
21 I want the audit.

22 THE COURT: Do you have any body cam footage?

23 MR. DePADILLA: No, Your Honor. It would not be  
24 maintained because you have to make a mark in the system to  
25 save it for trial. Since those weren't trial witnesses, and

1 we'd already turned over Para and Miller, and these hearings  
2 had gone forward, no, there aren't any more tapes, to the  
3 best of my knowledge.

4 THE DEFENDANT: I don't want the tape. I want the  
5 audit.

6 THE COURT: Mr. Perry, I'm going to give you a  
7 chance to respond.

8 THE DEFENDANT: Yes, ma'am. I'm sorry.

9 THE COURT: But I have to hear what Mr. DePadilla  
10 is saying to the Court so I can be sure there is nothing  
11 else out there that we can get to your attorney.

12 THE DEFENDANT: Yes, but he's mistaken. I don't  
13 want the tape. I want the audit. I want the documents  
14 saying how many times his video camera stopped, his axon  
15 camera stopped, when did he cut it on, when did he program  
16 it when he came on the shift. I want the audit from it.

17 I have Officer Miller's, but I do not have Officer  
18 Para where Officer Para testified to certain things at the  
19 hearing, and I would like the audit from this camera. I  
20 would like that.

21 THE COURT: Don't say anything else while I ask  
22 Mr. DePadilla certain questions.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Now, Mr. DePadilla, let's get straight  
25 on the cams and whatever you have. I have seen the tapes

1 that were offered on the motion to suppress.

2 Now, are there any other body cams or tapes  
3 available, let's say, video at this point?

4 MR. DePADILLA: Right. Based on our going back to  
5 Norfolk, there are no more tapes that exist at this time.

6 THE COURT: Now, are there any audio recordings?

7 MR. DePADILLA: No, there are no audio recordings  
8 either. What Mr. Perry is asking for is what is called an  
9 audit, a-u-d-i-t, trail, which the computer showing when the  
10 body cam was on or off. We will attempt to get Para's audit  
11 for Mr. Perry. I believe, if I may have one second to check  
12 with Mr. Jackson.

13 THE COURT: Wait just a minute. Audit, a-u-d-i-t?

14 MR. DePADILLA: Yes, Your Honor.

15 THE COURT: I thought he was saying audio. So it's  
16 audit, a-u-d-i-t. Do you have audit trails for the tapes?

17 MR. DePADILLA: We do not current have one for  
18 Para, but we do believe the computer will save that, at  
19 least I can make that representation to the Court. We  
20 believe, based on the prior experience with Norfolk, that  
21 would exist. So we will go now and pull the audit and see  
22 where he ends up with counsel so it can get to Mr. Perry at  
23 some point.

24 But all that's going to show, Your Honor, is when  
25 Officer Para's camera was on and off. As Your Honor well

1 remembers, Officer Para's camera didn't start in a timely  
2 fashion, right. He's the officer whose camera doesn't come  
3 on until five or six minutes into the traffic stop. It is  
4 Officer Miller's camera who is there the entire time taping  
5 it, and that's what we are going to sponsor at trial,  
6 Miller's cam.

7 THE COURT: Let me ask you, let's go to Miller's  
8 cam. Miller's cam, there would be no audit trail?

9 THE DEFENDANT: I got it.

10 THE COURT: He has the audit trail?

11 THE DEFENDANT: It stopped multiple times.

12 THE COURT: So you've got the Miller body cam, the  
13 video, and you've got the Miller audit trail, and those have  
14 been produced to counsel?

15 MR. DePADILLA: Yes, Your Honor, those have passed  
16 over to the defense.

17 THE COURT: Now, in terms of Officer Para, you have  
18 turned over the body cam, and I know the issues about it  
19 starting, but you have not turned over any audit trail, and  
20 you need to inquire whether there is one?

21 MR. DePADILLA: Yes, Your Honor.

22 THE COURT: Have you been asked for an audit trail  
23 before?

24 MR. DePADILLA: May I ask Mr. Jackson because he  
25 was working with Mr. Babineau.

1 THE COURT: Yes.

2 MR. DePADILLA: No. This is the first time we have  
3 become aware of it so we will try and satisfy that request  
4 at this time.

5 THE COURT: So, in other words, you, in your  
6 discovery, didn't fail to turn over an audit trail, I want  
7 that to be clear, you did not have an audit trail?

8 MR. DePADILLA: No, Your Honor, we did not. We are  
9 not going to sponsor Officer Para at trial based on what  
10 happened in the suppression hearing. But we will still  
11 supply what the computer, if it exists.

12 THE COURT: Just answer my questions.

13 MR. DePADILLA: Yes, Your Honor.

14 THE COURT: So we have a clear record. Let's go to  
15 Officer Para. His body cam, we know the issues about it  
16 starting late. You did not fail to produce an audit trail  
17 that you had?

18 MR. DePADILLA: No, Your Honor, we did not.

19 THE COURT: That needs to be clear for the record.

20 MR. DePADILLA: Yes, Your Honor.

21 THE COURT: So you didn't fail to produce an audit  
22 trail that you had?

23 MR. DePADILLA: That is correct, Your Honor.

24 THE COURT: Is that correct?

25 MR. DePADILLA: Yes, Your Honor.

1           THE COURT: You think one exists, but you don't  
2 know?

3           MR. DePADILLA: I cannot make that representation  
4 to the Court, but we will inquire if it does exist.

5           THE COURT: Will have to probably be tomorrow since  
6 we are already at 4:00 today, you will immediately inquire,  
7 and you will inform the Court and whatever the state of  
8 counsel is at that point in time?

9           MR. DePADILLA: Yes, Your Honor.

10          THE COURT: If it exists, you will get it and  
11 produce it?

12          MR. DePADILLA: Yes, Your Honor.

13          THE COURT: Now, have you failed to produce it on a  
14 request? Has anybody requested it before now?

15          MR. DePADILLA: No, Your Honor.

16          THE COURT: So from Grindrod, none of the four  
17 attorneys has requested that you look for audit trails of  
18 Officer Para?

19          MR. DePADILLA: Right. That is correct, Your  
20 Honor.

21          THE COURT: So that needs to be clear for the  
22 record. In other words, an audit trail may or may not  
23 exist. If it does exist, you're going to ask for it and  
24 produce it, if it does exist, and it is not something that  
25 you have failed to produce upon a request from defense



1 counsel?

2 MR. DePADILLA: That is correct, Your Honor.

3 THE COURT: Is there anything else you want to add?

4 MR. DePADILLA: No, Your Honor.

5 THE COURT: Now, Mr. Jackson, if you could confirm,  
6 you heard what Mr. Babineau represented to the Court about  
7 discussions with you regarding stipulations. Is there  
8 anything you want to add or do you agree with him?

9 MR. JACKSON: Nothing to add. I agree with what he  
10 said, represented about our conversations.

11 THE COURT: I wanted to be clear, the government  
12 then offered, at least in terms of stipulations, a  
13 stipulation that everyone would agree he was a convicted  
14 felon?

15 THE DEFENDANT: No, I --

16 THE COURT: I'm asking you, Mr. Jackson. Is that  
17 what the government offered?

18 MR. JACKSON: Yes. The stipulation was to him  
19 being a convicted felon and to knowing of that prohibited  
20 status.

21 THE COURT: Consequently, you would not plan to  
22 present the nature and extent of his criminal record?

23 MR. JACKSON: Yes, Your Honor.

24 THE COURT: Unless there is something else you want  
25 to add?

1 MR. JACKSON: Nothing else, Your Honor.

2 THE COURT: Now, Mr. Perry, you can stand up there.  
3 You've heard Mr. Babineau, he doesn't agree with what you've  
4 said, and you've heard that Mr. Jackson does agree with what  
5 Mr. Babineau said, and you've heard that Mr. DePadilla has  
6 said they will endeavor to get an audit trail of Mr. Para.

7 THE DEFENDANT: I understand that, but what I was  
8 trying to tell you in the beginning is they never, since the  
9 suppression hearing, that Lawrence Woodward never played the  
10 DVD on Mr. Jackson. He played the DVD, his DVD, his  
11 recording, and the one that Babineau has, that Mr. Jon  
12 Babineau has is blank, you know what I'm saying. What I'm  
13 saying is the audit from it, the time stamp, I had that for  
14 Officer Miller. That was entered into the record at that  
15 suppression hearing.

16 But Officer Para's, you know what I'm saying, we  
17 already know his testimony was fraudulent in itself, but let  
18 alone I want the audit to, you know what I'm saying, to go  
19 back and see whether the camera was on or off because we  
20 don't know.

21 All we know is what he testified to, but we know  
22 he's a liar so how can we believe anything that he says, you  
23 know what I'm saying. I'm not going to go off what he said.  
24 I want the discovery. I want the evidence. I want the  
25 evidence that back, you know what I'm saying. When he came

1 and talked to me, like I said, I didn't discuss a lot of  
2 different matters with Mr. Babineau as far as things that I  
3 wanted to be filed, you know what I'm saying.

4 For, one, I don't see how the USA could take all  
5 these dispositions as to, like you said, we on the second  
6 superseding indictment, you know what I'm saying. You deal  
7 with the facts and only the facts, but he can take how many  
8 dispositions he want. He can say, well, okay, I know this  
9 dude ain't truthful, but I believe this and I don't believe  
10 that. I don't understand that, you know what I'm saying.

11 It was certain things that I wanted to be filed,  
12 and, like I said, I talked to him numerous times, and he  
13 just do what he want to do, know what I'm saying, not what  
14 he should be doing, which is right, and, in fact, I never  
15 argued with anything outside of the law, his job. When he  
16 say, well, I don't agree with you on this. I said, well,  
17 Mr. Babineau, can you show it to me? Can you show me the  
18 case law citing?

19 THE COURT: Well, you've heard the discussion on  
20 the audit trail, and that is going to be pursued.

21 THE DEFENDANT: Well, am I going to get it?

22 THE COURT: Wait just a minute, Mr. Perry.

23 THE DEFENDANT: Am I going to get a copy of the  
24 actual DVD?

25 THE COURT: Wait just a minute, Mr. Perry. You

1 have heard the discussion about the audit trail of Officer  
2 Para. It has not been requested before. It has not been in  
3 the United States' possession. They think it may be in  
4 Norfolk, and they will proceed to request it. Where it goes  
5 from there, we are not there yet. The point is the audit  
6 trail, your request has been heard, it has now been made,  
7 and they are going to pursue it.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Now let's go back to the motion, and I  
10 want you to understand, Mr. Perry, that you have been under  
11 oath during this entire proceeding.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You understand that you're still under  
14 oath?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Now, we are on to Mr. Babineau's motion  
17 to withdraw as counsel. That's what the Court has to decide  
18 right now, is whether he withdraws as counsel and then what  
19 occurs in terms of your representation.

20 I will not offer anything at this point other than  
21 the Court has to determine on his withdrawal as counsel and  
22 whether you proceed then *pro se*, proceed with new counsel or  
23 proceed with standby counsel. That's not before the Court  
24 yet. What is before the Court at this juncture is what  
25 Mr. Babineau has represented that has occurred between the

1 two of you.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: That did not comfortably communicate  
4 with you and is not at all comfortable with representing you  
5 for the reasons that he said.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you agree with his motion to  
8 withdraw?

9 THE DEFENDANT: I mean, I don't oppose to it. I  
10 don't agree to what he testified to, but I don't oppose to  
11 his motion to withdraw, no. That's his position.

12 THE COURT: Do you want him to represent you?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Because, I mean, he's not out of the  
15 case unless I tell him he's out of the case. Do you want  
16 him to represent you?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: So you agree with his motion to  
19 withdraw as your counsel?

20 THE DEFENDANT: Yes. I don't agree with what he  
21 testified to. I don't agree with it.

22 THE COURT: Are you getting along with  
23 Mr. Babineau?

24 THE DEFENDANT: I mean, at this point, um, he wants  
25 out. Like I said, everything that he said wasn't true, but

1 he want out. Why would I go to trial with somebody who  
2 don't want to be a part of it.

3 THE COURT: Do you want him to be a part of your  
4 case?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: You may be seated.

7 Is there any further inquiry you want the Court to  
8 make in regard to your motion, Mr. Babineau?

9 MR. BABINEAU: No, ma'am.

10 THE COURT: Any further inquiry that you want the  
11 Court to make, Mr. DePadilla?

12 MR. DePADILLA: No, Your Honor.

13 THE COURT: Well, I first want to say on the record  
14 that if the Court allows this motion, this will be the  
15 fourth attorney who has moved basically on the same grounds  
16 in some form to be relieved of counsel, the last three, in  
17 particular, out of violent outbursts towards them and their  
18 representations on the record, many of which are documented  
19 through what occurred in lock-ups at the jail, and there  
20 have been outbursts, obviously, in court.

21 What the Court wants to add to that at this point  
22 is these are four of the best attorneys that appear before  
23 this Court, and their longevity alone before the Court may  
24 come close to a total of 100 years. I don't know if you  
25 start adding up the number of years that they have been

1 practicing. Mr. Grindrod is an outstanding public defender.

2 THE DEFENDANT: The best attorney I had.

3 THE COURT: As are the attorneys in the public  
4 defender's office. Then you have Mr. Woodward, who I know  
5 has at least 30 years of experience because I have been on  
6 the bench over that period of time, and Mr. Hobbs, who may  
7 not have 30 years, but he has a lot of years of experience  
8 and appears regularly before the Court on criminal cases.

9 Mr. Babineau, who I know for a fact has appeared  
10 for at least 30 years before the Court. So that you've got  
11 four of the most experienced attorneys, all of whom have  
12 appeared repeatedly before this Judge, and all four of  
13 which I don't know that they have ever -- they may have, but  
14 if they have had a motion to withdraw from a case outside of  
15 a conflict of interest, I don't recall any such motion.

16 So I'm going to put all of that on the record. On  
17 the other hand, the Court has to be aware of the right to  
18 have counsel represent the defendant, and the Court has to  
19 be aware of the communications that need to go forward  
20 between counsel and the defendant.

21 I would first say that I do find Mr. Babineau  
22 credible. His representations before the Court have been  
23 confirmed through the marshal service, with the jail, at  
24 least in terms of the conduct, not necessarily the words but  
25 the incident occurred, the phone call occurred, the

1 stipulations been confirmed through Mr. Jackson, and I have  
2 never had Mr. Babineau or any attorney, frankly, say that  
3 they didn't even want to sit at the table with the  
4 defendant.

5           Consequently, the motion is semi-timely. We are  
6 still at least about three weeks from trial. The Court has  
7 inquired into the breakdown across the board, and the Court  
8 would conclude that, again, this relationship is resulting  
9 in a total lack of communication. It appears that Mr. Perry  
10 wants to be his own lawyer and run his own case and is not  
11 going to agree with any attorney.

12           In any event, obviously, Mr. Babineau cannot  
13 proceed, and he has represented that he just cannot present  
14 an adequate and fair defense given his perceived seriousness  
15 of the threats. Basically his motion suggests, and he said  
16 in court that it's impossible for him to present an adequate  
17 or a fair defense given his perceived seriousness of the  
18 threats and his feelings at this juncture about the  
19 defendant.

20           So, consequently, I grant the motion to withdraw on  
21 certain conditions. Number one, it's not effective until I  
22 enter the order or say the order is effective. Obviously,  
23 Mr. Babineau has to turn over all files to any new counsel,  
24 and I will determine how that will be done, and given the  
25 order, but you are not under any further obligation to me or



1 proceed with the case at this juncture, Mr. Babineau, with  
2 Mr. Perry, but you are under your ethical duty as an officer  
3 of the Court to maintain the file and turn it over as  
4 directed by the Court. Do you understand?

5 MR. BABINEAU: Yes, ma'am.

6 THE COURT: I will issue a written order that  
7 relieves you of representation as of the conclusion of this  
8 hearing except for your duties as an officer of the Court to  
9 maintain the file and see that it is properly preserved and  
10 turned over to new counsel or as appropriate who the Court  
11 orders.

12 MR. BABINEAU: Yes, ma'am.

13 THE COURT: You, obviously, have to stay for the  
14 rest of the hearing.

15 MR. BABINEAU: I am. I'm staying, Judge.

16 THE COURT: That brings us to the point, Mr. Perry,  
17 determining how to proceed yet again in your case. I  
18 believe the last time the Court told you that this was the  
19 last counsel that would be appointed. I, however, will  
20 still obviously listen to how you wish to proceed. It's up  
21 to the Court to make the legal determination of how we are  
22 going to proceed, but I will still hear you on the  
23 methodology about which you proceed, but at some point there  
24 is case law, I haven't gotten to that point yet, where if  
25 the Court can't find an attorney to represent you, then the

1 Court has to determine at that point how to proceed in the  
2 case.

3 So you're still under oath, Mr. Perry. If you  
4 would stand up and tell the Court whether you wish the Court  
5 to try to find, and I don't know, frankly, at this point who  
6 is available to represent you that has the requisite  
7 experience and ability to deal with the case, but you're  
8 under oath, and I will ask you whether you wish the Court to  
9 endeavor to appoint another attorney to represent you?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Whether you want to represent yourself,  
12 if you represent yourself, whether you wish standby counsel.  
13 That is, obviously, ultimately a decision for the Court,  
14 whether you have standby counsel or not. So at this  
15 juncture how do you wish to proceed?

16 THE DEFENDANT: I'll stand on my Sixth Amendment.

17 THE COURT: Sir?

18 THE DEFENDANT: I said I wish to stand on my Sixth  
19 Amendment, my right to counsel.

20 THE COURT: You want the right to endeavor to  
21 appoint another counsel to represent you?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you wish to represent yourself?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: So you do not wish to represent

1 yourself. Do you understand then if I appoint counsel, it  
2 is counsel's decisions that control in the case and not  
3 yours?

4 THE DEFENDANT: What you mean?

5 THE COURT: In other words, you can't keep firing  
6 your counsel, as you say, or threatening your counsel, as  
7 you say, just because they don't agree with you.

8 THE DEFENDANT: I didn't threaten Mr. Babineau.

9 THE COURT: I find to the contrary. I am telling  
10 you that.

11 THE DEFENDANT: I didn't threaten him.

12 THE COURT: Mr. Perry, you cannot keep threatening,  
13 intimidating counsel, and you can't keep firing them because  
14 they don't agree with you. That doesn't mean that counsel  
15 won't abide by what you ask. In other words, Mr. Babineau  
16 didn't file any stipulation. Mr. Babineau didn't agree to  
17 any stipulation, but you cannot get angry with him and you  
18 cannot threaten him.

19 THE DEFENDANT: I didn't.

20 THE COURT: Because he offers something to you that  
21 has been offered by the United States or he's giving you a  
22 trial strategy. I am just telling you you cannot do this,  
23 and I find to the contrary. I found Mr. Babineau to be  
24 credible.

25 THE DEFENDANT: I'm telling you.

1           THE COURT: What he said to the Court has been  
2 corroborated by the other matters in the case. So I'm  
3 asking you, do you want new counsel?

4           THE DEFENDANT: Yes, ma'am.

5           THE COURT: Do you understand that counsel is the  
6 one who is running the case, not you?

7           THE DEFENDANT: I think so. I think I understand.  
8 I really -- I really -- at the end of the day, the only  
9 one -- this is my life on the line here, you know what I'm  
10 saying.

11          THE COURT: That's what the Court is concerned --

12          THE DEFENDANT: If we come to agree on case law or  
13 something like that, you know what I'm saying, I'm willing  
14 to work with a lawyer and meet them halfway. I was willing  
15 to meet Mr. Babineau halfway. As I said, Mr. Babineau gave  
16 me some advice, and I asked him what was the case law to  
17 back it. He never produced it.

18          THE COURT: I'm not going to repeat myself anymore.  
19 I'm just saying that if the Court can find a new lawyer to  
20 represent you, it's the lawyer's responsibility to make  
21 filings and to suggest a defense to you, and, in fact, it's  
22 his duty or her duty under the law to pass on to you  
23 anything the United States offers. If they offer  
24 stipulation, he has a legal duty to tell you. If they offer  
25 a plea agreement, he has a legal duty to tell you.

1 THE DEFENDANT: I understand.

2 THE COURT: You do not have to accept it.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: When you don't accept it, he doesn't  
5 file, but he has a duty to guide your defense. Do you  
6 understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Then you can be seated.

9 Frankly, at this point I may have to go out of the  
10 area to find an appropriate defense counsel, but I will  
11 endeavor to appoint new counsel as quickly as I can. Until  
12 such time, the trial date stays on the docket. I don't know  
13 whether if we can find new counsel or what will happen, but  
14 the trial date stays on the calendar.

15 Mr. DePadilla, go ahead and request these audit  
16 trails, and if you are able to get them, you should turn  
17 them over to new counsel, and you should so advise the Court  
18 with a copy to counsel that you've gotten them.

19 Mr. Babineau, you are to retain your file and turn  
20 it over to new counsel when appointed.

21 MR. BABINEAU: Yes, ma'am.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Yes.

24 THE DEFENDANT: Can I ask, can I just ask what --  
25 could I have an actual copy of the DVD, like? Could it be a

1 copy with the footage up there? Can my counsel be appointed  
2 a copy -- all the Cox video cam footage on the DVD?

3 THE COURT: The DVD that was in evidence with the  
4 Court?

5 THE DEFENDANT: Yeah. Yeah. Could my counsel be  
6 provided a copy, actual footage of it because the one that  
7 Mr. Babineau has is blank.

8 THE COURT: It's in evidence. I have viewed it.

9 THE DEFENDANT: My counsel, he has a blank.

10 THE COURT: I will ask him.

11 THE DEFENDANT: It's blank.

12 THE COURT: I'm going to ask Mr. Babineau. A copy  
13 of the DVD that is in evidence here in the court?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You have seen it. I have seen it. All  
16 the counsel have seen it. Counsel had been passing it  
17 forward.

18 THE DEFENDANT: He evidently haven't seen it.

19 THE COURT: Mr. Perry, please. Let's maintain the  
20 decorum here.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: I'm doing the best I can to be sure you  
23 get what it is that you want to see and you need.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I know it's preserved in evidence. I

1 know that as a fact because it was played, it's part of the  
2 suppression hearing. So I can assure you there is a DVD,  
3 and I can assure you that I have seen it and you have seen  
4 it. I can assure you that if for some reason counsel  
5 doesn't have it, I can't imagine they don't, but if they  
6 don't, you will.

7 THE DEFENDANT: Ask him.

8 THE COURT: I'm going to ask him, Mr. Perry.  
9 Mr. Perry, if you would please be seated.

10 Mr. Babineau, do you have a copy of the DVD?

11 MR. BABINEAU: I do, Judge. I actually have five  
12 DVDs, including Mr. Grindrod's file on the DVD, jail calls.  
13 In addition to that, Mr. Grindrod and I had a conversation,  
14 and he has copied, re-copied some other documents that he  
15 had from his file that he's not sure whether they were  
16 passed on, and they are at the desk at the Federal Public  
17 Defender's office, and when I leave here today, I will swing  
18 by there and pick them up, and I will have them, too, so I  
19 will pass them on to the next lawyer.

20 But I'm confident that everything that Mr. Perry  
21 wants is contained within the DVDs that I have in my  
22 possession.

23 THE COURT: I'm looking at you holding them.  
24 That's what you're holding up?

25 MR. BABINEAU: Yes, ma'am.

1 THE COURT: Thank you.

2 Then we will, in a moment, conclude this  
3 proceeding, and in summary, the jury trial remains for March  
4 31 at 11:00 a.m. in this court.

5 Number two, the Court will be inquiring with the  
6 marshals about proper security measures to maintain the  
7 integrity of the trial process.

8 Number three, the Court will, at the conclusion of  
9 the hearing, allow Mr. Babineau to withdraw and have no  
10 further communication or contact with the defendant with the  
11 one condition that he pick up any documents that are  
12 awaiting for him at the Federal Public Defender's office,  
13 that he makes them part of his file, and that his complete  
14 file is then turned over to the new attorney. In the order  
15 I am going to direct the new attorney to contact all of the  
16 previous attorneys to be sure they have all of their files.

17 In other words, I will put that in my order that  
18 new counsel shall contact the Federal Public Defender. The  
19 next one was Mr. Woodward, and then the next one was  
20 Mr. Hobbs, and the next one was Mr. Babineau to be sure that  
21 they have everything, that they passed on everything to new  
22 counsel of the defendant. That should be the Federal Public  
23 Defender. Mr. Grindrod is passing everything on to you. So  
24 be sure you sign for those papers.

25 MR. BABINEAU: Yes, ma'am.



1 THE COURT: So we will see that everything is  
2 assuredly by court order with the next attorney. In the  
3 meantime, I consider this as basically the defense's motion  
4 for new counsel at this point because I've got to find new  
5 counsel. So that's where we are in the process.

6 Is there anything you want to add, Mr. DePadilla,  
7 Mr. Jackson?

8 MR. DePADILLA: No, Your Honor. Thank you.

9 MR. JACKSON: Nothing, Your Honor.

10 THE COURT: Anything further, Mr. Babineau?

11 MR. BABINEAU: No, ma'am.

12 THE COURT: Then I think that the Court has  
13 considered all the outstanding matters, and we are trying to  
14 go forward towards the current trial date, which remains on  
15 the Court's docket. The Court stands in recess until  
16 tomorrow.

17 (Hearing adjourned at 4:23 p.m.)

18 CERTIFICATION

19  
20 I certify that the foregoing is a correct transcript  
21 from the record of proceedings in the above-entitled matter.  
22

23 X \_\_\_\_\_/s/ \_\_\_\_\_ X

24 Jody A. Stewart

25 X \_\_\_\_\_ 2-8-2021 \_\_\_\_\_ X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Date